

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6705

Petition of XO Communications, Inc. for)
Approval of an Indirect Transfer of Control)

Order entered: 7/1/2002

I. INTRODUCTION

On May 7, 2002, XO Communications, Inc. ("XO" or the "Petitioner"), the parent corporation of XO Long Distance Services, Inc. ("XO LD") filed a Telecommunications Merger and or Acquisition Request for Approval Form ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 107, for approval of an indirect transfer of control of XO's Vermont operating subsidiaries: XO LD.

On June 20, 2002, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfer of control because the proposed transaction would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the Petition without further investigation or hearing.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. XO LD is a wholly-owned subsidiary of XO, a Delaware corporation. XO LD was issued a Certificate of Public Good (CPG No. 484) to provide intrastate telecommunications services, on February 16, 2000. Petition at 1 and Exh. A.

2. Pursuant to a Stock Purchase Agreement ("Agreement"), dated January 15, 2002, among XO, Telefonos de Mexico, S.A. de C.V. ("Telmex"), Forstmann Little & Co. Equity Partnership-VII, L.P. and Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P. (together "Forstmann Little" and together with Telmex, the

"Investors"), each Investor will acquire approximately 40% of XO's voting power. Following the transaction, XO LD will continue to provide the same services it currently provides in Vermont. Petition at 2 and Exh. A.

3. XO LD will continue to operate under its current name and tariff. The only change is in the ultimate ownership of XO LD. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Petition at 2 and Exh. A.

4. The proposed transaction will promote the public interest in that it will allow XO and its operating subsidiaries to obtain needed equity funding to support its operations overall, thereby enabling its operating subsidiaries to continue providing telecommunications service in Vermont. Petition at Exh. A.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A. § 107. This statute conditions approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A. § 107). This standard is met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).¹ In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the Petition, we conclude that 30 V.S.A. § 107 applies because the sale of approximately 80% of the voting stock of XO, the parent corporation of XO LD, to the Investors will result in the transfer of controlling interest of XO and, thus, the indirect transfer of control of XO LD. We further conclude that the transfer of control will not affect the services that XO LD currently provides to customers in Vermont. XO LD will continue to operate under its current name and tariff. The proposed transaction will also allow XO access to equity funding. The

1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

resulting transfer of control, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 107 and should be approved.

IV. CONCLUSIONS

The indirect transfer of control of XO LD pursuant to the Agreement should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 107(b).

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The indirect transfer of control of XO Long Distance Services, Inc., will promote the public good and, therefore, is approved.
2. Petitioners shall file a letter notifying the Board of the completion of the transaction within one week of such completion.

DATED at Montpelier, Vermont, this 1st day of July, 2002.

<u>s/Michael H. Dworkin</u>)	PUBLIC SERVICE
_____)	
_____)	
<u>s/David C. Coen</u>)	BOARD
_____)	
_____)	
<u>s/John D. Burke</u>)	OF VERMONT

OFFICE OF THE CLERK

Filed: July 1, 2002

Attest: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.